

CANADA / JUDGMENT

Turner v. Stabeck

2020 BCSC 1553

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 1553 Turner v. Stabeck

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Turner v. Stabeck,

2020 BCSC 1553

Date: 20201022

Docket: S197359

Registry: Vancouver

Between:

Wendy Turner

Plaintiff

And

Bradley Keith Stabeck, personal representative of the Estate of Keith Stabeck

Defendant

Before: The Honourable Mr. Justice N. Smith

Reasons for Judgment

Counsel for Plaintiff:

A. Winters

Counsel for Defendant:

E. Woolley

Place and Date of Trial:

Vancouver, B.C.

August 28, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 22, 2020

INTRODUCTION

- [1] The Plaintiff, Wendy Turner, seeks a declaration on summary trial that she was the spouse of Keith Stabeck, who died suddenly and without a will on September 3, 2018. If she was his spouse, she will inherit the largest share of his estate under the intestacy provisions of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. If not, the estate will be divided between his two adult children, Bradley and Sarina Stabeck.
- [2] Section 2(1) of WESA says two people are spouses of each other if they were both alive immediately before a relevant time and:
- (a) they were married to each other, or
 - (b) they had lived with each other in a marriage-like relationship for at least 2 years.
- [3] The Plaintiff and Keith Stabeck were not married, but were living together in a marriage-like relationship when he died. The issue is whether that marriage-like relationship began at least two years before his death, as required by s. 2(1)(b).
- [4] The defendant, Bradley Stabeck, is Keith's son and the administrator of his estate. He says the Plaintiff and his father began living together only eight or nine months before his father's death. Prior to that, he says they were only "casually seeing" each other, with some extended visits to each other during holiday and vacation periods. He also says the matter is not suitable for summary trial because the Plaintiff's evidence about the relationship must be subject to full cross-examination before a trial judge.
- [5] Although WESA refers to people living with each other, a relationship can be "marriage-like" for purposes of the statute even when each person retains their own residence: *Richardson Estate (Re)*, 2014 BCSC 2162 at para. 42 [*Richardson Estate*]; *Connor Estate*, 2017 BCSC 978 at para. 45 [*Connor Estate*]. The cases turn on matters that include the history of the relationship, the intention of the couple, and how they presented themselves to others.
- [6] For the reasons that follow, I find this matter is suitable for determination by summary trial, and that the affidavit evidence provided is sufficient to establish that the relationship between Keith and the Plaintiff was "marriage-like" for at least two years prior to his death in September of 2018. Thus, the Plaintiff qualifies as a spouse under s. 2(1)(b) of WESA.

- [7] This judgment will be referring to several members of the Stabeck family. In order to avoid confusion and repetition created by the same surname, I will sometimes refer to them by their first name only.

THE EVIDENCE

- [8] The Plaintiff met Keith in August of 2015, when she was 64 and he was nearly 59. Each had ended a previous long term relationship some years earlier. At the time, the Plaintiff lived in New Westminster, B.C. while Keith lived in Kamloops, B.C.
- [9] The Plaintiff says in her affidavit that their relationship developed quickly and became intimate in September of 2015, when she stayed with Keith for two nights. Over the fall of 2015, they were together again on three occasions, totalling seven nights, and the Plaintiff then travelled to Kamloops for Christmas of 2015. She says it was then that they decided she would eventually move to Kamloops to live with him, but she could not move immediately because she was committed to providing childcare for her grandson during the school week. She was also employed on a short-term contract basis in the Lower Mainland, selling shoes at a semi-annual shoe sample sale.
- [10] The Plaintiff says she and Keith developed a routine of one travelling to stay with the other as frequently as possible. Whenever she travelled to Kamloops, she says she would bring some of her clothes and personal items to leave at Keith's home. After his trips to New Westminster, Keith would return to Kamloops with some of her furniture or larger items in his truck. The Plaintiff's son, Kelli Turner, recalls attending with Keith and his mother at her rented storage locker to help them load items into Keith's truck, but he is not specific about the timing of those occasions.
- [11] Although the Plaintiff says in her affidavit that this process of moving her belongings began in early 2016, she said at her examination for discovery that it began toward the end of 2016. She says that was an error in her discovery evidence, but the defendant relies heavily on this discrepancy. He says it goes directly to the nature of the relationship by September of 2016--the key date two years before Keith's death.
- [12] Keith's brother, Barry Stabeck, lives in Kamloops. He says he and his brother spoke by telephone every day and saw each other "a couple of times a week." He says he met the Plaintiff at the same time his brother did, saw her at Keith's home during the Christmas season in 2015, and began seeing her more frequently after that. According to Barry, the Plaintiff came to Kamloops to stay with Keith every few weeks during the winter and spring of 2016 and Keith would go to the Lower Mainland once or twice a month to stay with her.
- [13] Barry recalls his brother telling him, around Christmas of 2015, that he and the Plaintiff were making long-term plans for their relationship. Those plans included the Plaintiff moving to Kamloops and living with him until he retired, after which they would sell his home in Kamloops and move somewhere with a "more relaxed pace." He says this was a change from Keith's previous retirement plans, which were to move to Enderby, B.C. in

order to be closer to his children, who both live in Vernon, B.C. He also says Keith told him they were gradually transferring the Plaintiff's belongings to his home in Kamloops.

- [14] Lorna Ethier is Barry Stabeck's partner. She says that by early 2016 the Plaintiff and Keith were spending many weekends together. When the Plaintiff came to Kamloops, Ms. Ethier and Barry would usually see the Plaintiff and Keith for a visit or dinner. She says she noticed photographs and other personal items that the Plaintiff had brought to Keith's house and says:

"Within a few months, it was apparent that the house in Kamloops was home to both Wendy and Keith."

- [15] Anne McQuade, who describes herself as the Plaintiff's best friend, says she began hearing about Keith in the late summer or early fall of 2015, but did not meet him until the spring of 2016. At a dinner on that occasion, she says Keith told her that the plan was for the Plaintiff and him to live in his Kamloops house for a year or so, then "sell the house and downsize." She says:

It was apparent to me from Keith's comments and his behaviour towards Wendy during our dinner that Keith also viewed the relationship as a serious and long-term commitment.

- [16] Ms. McQuade also says that during visits to the Plaintiff's New Westminster apartment during the first half of 2016, she noticed some personal items and pieces of furniture were missing and the Plaintiff told her Keith had taken them to Kamloops.
- [17] The Defendant says his father did not tell him of any plans for the Plaintiff to move in with him until the spring of 2017. His sister, Sarina Stabeck, says she never heard about those plans until she heard her father and brother discussing them.
- [18] The Defendant says that before hearing about plans for the Plaintiff to live with Keith, he understood her to be one of a number of women his father was casually seeing. Even by the summer of 2017, when he agrees the relationship appeared to be getting more serious, there was no indication of any of the Plaintiff's belongings in the house. Sarina gives similar evidence of not seeing the Plaintiff's belongings.
- [19] The Plaintiff says that in the spring of 2016 Keith gave her a diamond ring as a symbol of his commitment to her, although not an engagement ring, and she reciprocated by giving him a ring and pendant on their next visit.
- [20] There are several affidavits from people who say they saw the ring the Plaintiff received and understood it to have come from Keith. The Plaintiff's son Kelli says he noticed her ring in the summer of 2016. Ms. Ethier says she saw it in the spring of that year, as does Ms. McQuade. Keith's neighbors, William and Gail Antifay, also give evidence of being aware of the ring, although they are not specific about when they first saw it. Ms. Antifay says she was surprised because she had known Keith's former partner, to whom he had never given a ring during a relationship that lasted more than 10 years.

[21] On the other hand, Bradley and Sabrina say they never saw either ring and did not hear about them until after Keith's death.

[22] The Plaintiff says she lived with Keith full time in Kamloops during the summer of 2016, when she did not need to care for her grandson. That evidence is supported by Barry and Ms. Ethier, who say they saw the two of them together frequently and did a number of activities with them during that summer. Barry says in his affidavit:

From the summer of 2016 until Keith's death, I knew that Wendy and Keith were a committed couple.

[23] However, Keith's children both say the Plaintiff was not present on a two-day camping trip they took with their father in July 2016, but another female friend of Keith's was present for part of the time. Bradley says she stayed "until the evening on the first night." He also says he had three or four other visits with his father during the summer of 2016, some in Kamloops and some in Vernon, and the Plaintiff was not present on those occasions.

[24] In response to the evidence about the woman named by the Defendant, the Plaintiff says she knows her, occasionally spent time with her, and never had the impression she and Keith were any more than friends. There is no evidence directly from that person.

[25] Bradley says he understood his father to also be seeing another woman in Vernon. He says Keith's bank records indicate he took a number of trips to Vernon in 2016 and 2017 on dates that do not coincide with visits to his children. None of those records are exhibited to Bradley's affidavit and counsel for the Plaintiff says they have not been disclosed.

[26] Bradley says that in 2016 his father told him he was "not serious" about the Plaintiff and was reluctant to pursue a relationship with her, in part because she was older than he was.

[27] In the fall of 2016, the Plaintiff says she returned to New Westminster to resume childcare for her grandson. She says she and Keith returned to their previous routine of living in different locations, but travelling to be together as frequently as possible. She says they spent Thanksgiving of 2016 on Vancouver Island with her stepson Dean Matewish, his wife Bridget Matewish, and Ms. Matewish's parents and grandparents. That is supported by Ms. Matewish, who says that is the first time she met Keith, but had heard about him frequently prior to that date.

[28] The Plaintiff says she and Keith spent Christmas of 2016 together. She has produced a copy of a Christmas card from a friend, dated December 22, 2016, that refers to "you and Keith along with your family and friends." The Defendant agrees that the Plaintiff was in Kamloops for Christmas of 2016, but says that is only the second time he and his sister met her, the first having been the previous Christmas.

[29] From Christmas 2016 to June 2017, the Plaintiff says she and Keith resumed the practice of travel between Kamloops and New Westminster, but they were together full-time in Kamloops again during the summer of 2017.

- [30] Ms. Antifay, the next-door neighbour, says she and her husband were very busy in 2016 and did not see much of Keith, but she noticed a white car parked in front of his house from time to time. She later learned that car belonged to the Plaintiff. In 2017, when her schedule became less hectic and she was home more frequently, Ms. Antifay says she really noticed how often Keith seemed to be away and how often the Plaintiff's car was there.
- [31] The Plaintiff returned to New Westminster in September of 2017, but by then her son and his wife were expecting their second child. When her daughter-in-law went on maternity leave in October, the Plaintiff says she was free of her childcare commitments. She then gave notice on her apartment in New Westminster and moved all of her remaining possessions to Kamloops. On December 2, 2017, she posted on Facebook that she had moved. She continued to live and travel with Keith until his sudden death in September 2018.
- [32] The Plaintiff attaches more than 60 pages she describes as copies of birthday, Christmas, Valentine's Day and anniversary cards that she and Keith exchanged. Of particular note are two undated anniversary cards. One includes a handwritten note to Keith from the Plaintiff that says "Happy First Anniversary." The other has a handwritten note, signed "Keith" that says "Happy Anniversary on our second year of great times and adventures."
- [33] I was told at the hearing of this application that Keith's estate consists primarily of approximately \$600,000, which are the proceeds from sale of his house in Kamloops. Those funds are being held in trust. Keith also held Registered Retirement Savings Plans, on which he never changed the beneficiary designation. Those funds, which the Plaintiff believes also totalled about \$600,000, passed to Bradley and Sarina outside the estate.

SUITABILITY FOR SUMMARY TRIAL

- [34] This application was brought as a summary trial pursuant to Rule 9-7 of the Supreme Court Civil Rules. Rule 9-7(15) says:
- (15) On the hearing of a summary trial application, the court may
- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
 - (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
 - (c) award costs.
- [35] The summary trial procedure is linked to the concept of proportionality, codified in Rule 1-3 of the Rules:

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

(a) the amount involved in the proceeding,

(b) the importance of the issues in dispute, and

(c) the complexity of the proceeding.

[36] Rule 9-7 and its predecessor Rule 18A were an important part of the civil litigation system in this province long before the Supreme Court of Canada emphasized the importance of alternatives to the conventional trial in *Hryniak v. Mauldin*, 2014 SCC 7. But, as Justice Fothergill stated in *AME Distribution Inc. v. Wang*, 2018 BCSC 426 at para. 47, the importance of the summary trial process is best captured in the opening paragraphs of *Hryniak*:

[1] Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

[2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[3] Summary judgment motions provide one such opportunity.

[37] The Defendant argues that this matter cannot be decided on summary trial, primarily because it turns on the Plaintiff's credibility. The issue of suitability was not raised in the Defendant's filed application response, but Rule 9-7(15) refers to the court's ability to find facts and the court's assessment of fairness. The court's duty to consider suitability on any summary trial application exists independently of the position taken by the parties.

[38] In *Gichuru v. Pallai*, 2013 BCCA 60, the Court of Appeal said:

- [30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), the court confirmed that the court under this rule "tries the issues raised by the pleadings on affidavits", that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law" provided that the judge does not find "it is unjust to do so" (p. 211). In determining the latter issue (whether it would be unjust to proceed summarily), the Chief Justice identified a number of relevant factors to consider (at p. 215):

In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, inter alia, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

- [31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.
- [39] *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, [1989] B.C.W.L.D. 1685 (C.A.) also dealt with the issues of credibility and conflicting affidavits at 215--16, cited to B.C.L.R.:

Subject to what I am about to say, a judge should not decide an issue of fact or law solely on the basis of conflicting affidavits even if he prefers one version to the other. It may be, however, notwithstanding sworn affidavit evidence to the contrary, that other admissible evidence will make it possible to find the facts necessary for judgment to be given.

- [40] In this case the court must determine if the evidence establishes that a "marriage-like" relationship existed. The general nature of the evidence relevant to that inquiry was outlined in *Weber v. Leclerc*, 2015 BCCA 492, leave to appeal ref'd [2016] S.C.C.A. No. 19, at paras. 23-24:
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".

- [41] The Plaintiff has given evidence of the nature of her relationship with Keith and of their intentions. That evidence is disputed by Keith's children, Bradley and Sarina, who say that her description of the relationship is not consistent with anything they observed or were told. If this was simply a credibility contest between the Plaintiff on the one hand and Bradley and Sarina on the other, I would agree that the matter is unsuitable for summary trial.
- [42] However, the Plaintiff has provided evidence from others who observed their "lifestyle and interactions." The full range of the evidence must be taken into account in assessing the relationship. To the extent the evidence relied on by the Plaintiff differs from that of the Defendant and his sister, the differences arise largely from people seeing the Plaintiff and Keith at different times, in different situations, and with different frequency.
- [43] The Defendant relies on the discrepancy in the Plaintiff's evidence about the date she began moving her possessions to Kamloops. That goes only to one possible indicator of the relationship, but it nonetheless could be a matter requiring further cross-examination if the Plaintiff was relying solely on her own evidence. However, other affiants have given evidence on this point and those who can attribute a specific time period give evidence consistent with that of the Plaintiff. I therefore find further cross-examination is not required.
- [44] Although there are some conflicts in the evidence, I am satisfied there is evidence that allows me to find the facts of the relationship between Keith and the Plaintiff and to consider whether it was "marriage-like" as that term is defined in the relevant authorities. I find that there is little likelihood of a conventional trial producing significantly more or different evidence and that a summary trial is the appropriate and most proportionate procedure for resolving this action.

THE LAW

- [45] The first point that emerges from the authorities is the difficulty posed by WESA's reference to a "marriage-like relationship." As noted in *Austin v. Goerz*, 2007 BCCA 586 at para. 58, individuals structure their relationships in a wide variety of ways, making it difficult to determine when a spousal relationship exists for a given couple. Indicia that help define a relationship as marriage-like for some couples may be less significant or absent for others. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.

- [46] That wide variety of relationships is likely why the legislature has not attempted to provide any further definition. Such a definition would likely be arbitrary and either over- or under-inclusive. But the lack of a further definition has been frustrating for the courts and academic commentators. In *Mother 1 v. Solus Trust Company*, 2019 BCSC 200, Justice Myers reviewed the case law, some of which will be referred to later in these reasons, and said at para. 143:
- [143] Having canvassed the law relating to the nature of a marriage-like relationship, I will digress to point out the problematic nature of the concept. It may be apparent from the above that determining whether a marriage-like relationship exists sometimes seems like sand running through one's fingers. Simply put, a marriage-like relationship is akin to a marriage without the formality of a marriage. But as the cases mentioned above have noted, people treat their marriages differently and have different conceptions of what marriage entails.
- [47] After referring to academic articles on the uncertainties involved and difficulties posed by a lack of a clear definition, Myers J. continued at para. 148:
- [148] Marriage now being so multifarious, one cannot help but wonder if the concept of a marriage-like relationship has outlived its utility. An estate or family trial ought not to be an exercise in sociology in which leaps of judicial notice are often made. That, of course, is a matter for the legislature and WESA is to be applied according to its terms.
- [48] These inherent uncertainties are not simply a problem for the courts. While many individuals may "ease into" a relationship without considering how it will operate, others may wish to plan their lives knowing what obligations they are or are not accepting. The law gives them little predictability or certainty.
- [49] Having said that, I must, as Myers J. said, consider the law as it exists and apply WESA according to its terms.
- [50] *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376, 2 A.C.W.S. (2d) 486 (Ont. Dist. Ct.) at 381-82 [*Molodowich* cited to R.F.L.] set out a frequently cited list of 22 factors grouped into seven categories that may be taken into account in determining a marriage-like relationship:
1. Shelter:
 - (a) Did the parties live under the same roof?
 - (b) What were the sleeping arrangements?
 - (c) Did anyone else occupy or share the available accommodation?
 2. Sexual and Personal Behaviour:
 - (a) Did the parties have sexual relations? If not, why not?
 - (b) Did they maintain an attitude of fidelity to each other?

- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

3. Services:

What was the conduct and habit of the parties in relation to:

- (a) preparation of meals;
- (b) washing and mending clothes;
- (c) shopping;
- (d) household maintenance; and
- (e) any other domestic services?

4. Social:

- (a) Did they participate together or separately in neighbourhood and community activities?
- (b) What was the relationship and conduct of each of them toward members of their respective families and how did such families behave towards the parties?

5. Societal:

What was the attitude and conduct of the community toward each of them and as a couple?

6. Support (economic):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution toward the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

7. Children:

What was the attitude and conduct of the parties concerning children?

[51] Those factors must be regarded as helpful indicators, not a checklist: Weber at para. 25. No authority suggests that all of those factors are necessarily present in an individual case. In McDowell v. Andrews, 2018 BCSC 2216, Justice Matthews said at para. 25, referring to the list in Molodowich:

[25] These indicia may be present in varying degrees. For example, in some marriage-like relationships, there is a complete blending of finances and property while, in others, spouses keep their property and finances totally separate. Although a party may subjectively believe that he or she is not in a marriage-like relationship, the reality may be otherwise.

[Citations omitted.]

[52] Justice Matthews at para. 23 helpfully set out a shorter, more manageable list of factors that effectively capture many of the Molodowich indicia:

- a) the parties' intentions, particularly that the relationship will be of lengthy, indeterminate duration;
- b) whether there is financial interdependence;
- c) whether the parties resided together and if so, whether they did so in the nature of roommates or in the nature of a couple;
- d) objective evidence of the parties' lifestyle and interactions; and
- e) whether the parties engaged in sexual relations and were intimate in the sense of fidelity and sharing personal information.

[53] Of those, Matthews J. described the first--intention to have a committed relationship of indeterminate duration--as the essential question, adding "or, if there are questions about their intentions in this regard, whether there is objective evidence" of that type of relationship (at para. 27).

ANALYSIS

[54] The Defendant relies heavily on the question of co-residence, which is a potentially important, but not essential factor. In *Richardson Estate*, for example, the applicant and the deceased maintained separate residences throughout a 15-year relationship. One worked and owned a home in Surrey while the other worked and owned a home on Gambier Island. Justice Steeves found that they both travelled back and forth between the two homes and that they had "an exclusive and intimate" relationship in both locations. He continued:

[47] Taken over all, I conclude that the applicant and Mr. Richardson structured their relationship so that they could work in two locations and look after their respective families in those locations. As reflected in the above authorities, that is consistent with a marriage-like relationship.

[55] In *Connor Estate*, the plaintiff and the deceased had a 20-year relationship, during most of which the plaintiff was married to someone else. Even after the plaintiff and his wife separated, three years before the death of the deceased, the plaintiff and the deceased never shared a home. After considering all the evidence, Justice Kent said at para. 50:

- [50] The evidence is overwhelming and I find as a fact that Mr. Chambers and Ms. Connor loved and cared deeply about each other, and that they had a loving and intimate relationship for over 20 years that was far more than mere friendship or even so-called "friendship with benefits". I accept Mr. Chambers' evidence that he would have liked to share a home with Ms. Connor after the separation from his wife, but was unable to do so because of Ms. Connor's hoarding illness. The evidence amply supports, and I find as a fact, that Mr. Chambers and Ms. Connor loved each other, were faithful to each other, communicated with each other almost every day when they were not together, considered themselves to be (and presented themselves to be) "husband and wife" and were accepted by all who knew them as a couple.
- [56] The relationship was obviously much shorter in the current case, but the evidence is clear that by the spring of 2016, Keith and the Plaintiff were travelling to be with each other in one home or the other whenever their other commitments allowed. The Plaintiff's evidence to that effect is supported by the evidence of others, including Barry Stabeck, Ms. Ethier, Ms. McQuade, and Kelli Turner. All of those people, and others, had come to see them as a couple.
- [57] The Defendant also raises the question about how Keith and the Plaintiff held themselves out to their children. The question of the relationship with family members is included in the Molodowich factors.
- [58] I accept the evidence of Bradley and Sarina that the serious nature of their father's relationship with the Plaintiff did not become apparent to them until mid-2017. However, they lived in a different community than their father and do not give evidence of being in communication with him nearly as frequently as does their uncle Barry.
- [59] Whether by accident or choice, Keith appears to have more frequently seen his children at times when the Plaintiff was not present. At the relevant time, he appears to have been closer--in the sense of both physical proximity and frequency of direct contact--to his brother and Ms. Ethier, who saw the relationship as a serious and committed one. Consistent with this, the evidence from members of the Plaintiff's family--Kelli Turner and Bridget Matewish--is that they began to regard her and Keith as a committed couple at a very early stage.
- [60] I return to the essential question identified by Matthews J. in McDowell: When did Keith and the Plaintiff develop an intention to be in a committed relationship of an indeterminate, lengthy duration? The Plaintiff's evidence is that she considered that to be the case well before September of 2016. There is also a substantial body of evidence, including an exchange of rings and statements to others, supporting that Keith Stabeck was of the same mind, although there is also some contradictory evidence from his children.

- [61] In the end, I find the most compelling objective evidence comes from Barry Stabeck and Lorna Ethier. They describe seeing the couple together and spending time with them more frequently than any of the other affiants. Barry states unequivocally that he knew them to be a committed couple by the summer of 2016. Ms. Ethier's evidence also portrays them giving every sign of having made a long-term commitment to each other.
- [62] I find that when the Plaintiff and Keith began living together under the same roof in late 2017, it was not a change in their relationship but a finalization of a plan they had formed and were working to achieve by September of 2016. The evidence supports that by September of 2016, they had mutually agreed to have an intimate and exclusive relationship of lengthy and indeterminate duration.

CONCLUSION

- [63] I conclude on the balance of probabilities that the Plaintiff and Keith Stabeck were in a marriage-like relationship at the date of his death on September 3, 2018, and had been in such a relationship for at least two years preceding that date. She was therefore his spouse as defined in s. 2(1) of WESA.
- [64] As the spouse, the Plaintiff is entitled to a preferential share of the estate and to one-half of the remaining residue, pursuant to s. 21 of WESA. In a situation like this, where the deceased's descendants are not also descendants of the spouse, the preferential share is \$150,000: WESA s. 21(4).
- [65] The Defendant will account to the Plaintiff for estate property and assets administered by him since Keith Stabeck's death.
- [66] The Plaintiff seeks costs payable by the Defendant personally, saying the action was driven solely by his refusal to acknowledge her spousal status. In view of the uncertainty in identifying the point at which a marriage-like relationship began and the limitations in the Defendant's personal knowledge at the relevant time, I find it was reasonable for the Defendant to put the Plaintiff to proof of her status. Costs will be payable from the estate.

"N. Smith, J."

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